Our Docket No.: 01-0310/7553.00019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant:	Stephen J. Brown		
Application No.:	09/810,334	Examiner:	Koppikar, V.
Filed:	March 14, 2001	Art Group:	3686
For:	INTERACTIVE PATIENT COMMUNICATION DEVELOPMENT SYSTEM FOR REPORTING ON PATIENT HEALTHCARE MANAGEMENT		

APPEAL BRIEF

Mail Stop - Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant submits the following Appeal Brief pursuant to 37 C.F.R. §41.37 for consideration by the Board of Patent Appeals and Interferences. Enclosed herewith is the charge $540.00 to cover the cost of (i) filing the opening brief, as required by 37 C.F.R. §41.20(b)(2). Please charge any additional fees or credit any overpayment to Deposit Account Number 50-0541.

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I. REAL PARTY IN INTEREST

The real parties in interest are Health Hero Network, Inc., the assignee of record and a subsidiary of the Robert Bosch North America, and Abbott Diabetes Care, a subsidiary of Abbott Laboratories, Inc., a licensee of the application.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellant, Appellant's legal representative, or Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-7, 9-16 and 18-22 are pending and remain rejected. Claims 8 and 17 have been canceled. The Appellant hereby appeals the rejection of claims 1-7, 9-16 and 18-22.

IV. STATUS OF AMENDMENTS

Appellant is appealing a final Office Action issued by the Examiner on October 17, 2008. On December 11, 2008, Appellant filed an Amendment After Final that amended claim 19 and requested reconsideration of all other claims. On December 23, 2008, the Examiner issued an Advisory Action indicating that (i) the rejections were being maintained and (ii) the amendment was entered. On January 16, 2009, Appellant filed a Notice of Appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. In a first embodiment, represented by independent claim 1, the presently claimed invention provides a server (system 10) generally including a questionnaire generator (dialog composer (20), a database in a storage medium (library 120) and a profile generator (profile composer 30). The server is generally configured to assemble care specific content objects, referred to as dialogs (300), into programs for patient healthcare management. The programs may subsequently be transferred to individuals (the patients 100) at remote apparatuses (remote terminals). Operations of the server are generally described on page 2 line 1 to page 3 line 11 and page 4 line 11 to page 5 line 9 and illustrated in FIG. 1 of the application.

The questionnaire generator may be for (i) generating a questionnaire comprising (a) one or more questions (130) for determining an expression of risk for an individual, (b) a first number of answer options (140) to each question and (c) one or more follow-up actions (150). The expression of risk generally concerns at least one of a physical condition of the individual (134), a mental condition of the individual (136), and a behavior of the individual (132). The questionnaire generator may also be for (ii) associating each of the answer options with one of a second number of values (FIG. 6, x-axis 1-9 point risk scale) representing a level of risk, the second number of values may be greater than the first number of answer options and (iii) transmitting the questionnaire from the server to an apparatus (of the patient 100). The apparatus is generally (a) associated with the individual and (b) remotely found from the server. Operations of the questionnaire generator are generally described on page 5 lines 10-24 and page 6 line 20 to page 7 line17, as illustrated in FIGS. 2 and 5 of the application.

The database may contain model information relating to (i) an aspect of care (620), (ii) the expression of risk (630) and (iii) the level of risk (610). The database is generally illustrated in FIG. 6 and described in the corresponding text on page 7 line 18 to page 8 line 7 of the application.

The profile generator may be for (i) generating a profile for the individuals (see FIG. 7) based on one or more of the aspects of care, responses to the questions, the expression of risk and risk associated with the individual and (ii) sending health related information to the individual based on the profile (750, 752, 754). The data relating to the physical condition of the individual generally comprises patient information from one or more medical claims (stored in 320) received by the server from some medical claims paying organization associated with the individual. Creation of the profile is generally described on page 8 line 8 to page 9 line 4 and is illustrated in FIG. 7 of the application.

B. In a second embodiment, represented by independent claim 10, the presently claimed invention provides a method (of the system 10) for providing customized health information to an individual (the patients 100). The method generally includes steps (A) to (F). The method may be implemented by the server (system 10) to assemble care specific content objects, called dialogs (300), into programs for patient healthcare management. The programs may subsequently be transferred to the individuals at remote apparatuses (remote terminals). Steps of the method are generally described on page 2 line 1 to page 3 line 11 and page 4 line 11 to page 5 line 9 and illustrated in FIGS. 2-5, 7 and 8 of the application.

Step (A) may generate a questionnaire comprising (i) one or more questions (130) for determining an expression of risk for the individual, (ii) a first number of answer options (140) to each question and (iii) one or more follow-up actions (150). The expression of risk generally concerns at least one of a physical condition of the individual (134), a mental condition of the individual (136), and a behavior of the individual (132). Step (A) may be implemented by the questionnaire generator (dialog composer 20). Step (B) may associate each of the answer options with one of a second number of values (FIG. 6, x-axis 1-9 point risk scale) representing a level of risk, the second number may be greater than the first number. Step (C) may transfer the questionnaire from a server to an apparatus (of the patient's 100). The apparatus is generally (i) associated with the individual and (ii) remotely located from the server. Steps (A), (B) and (C) may be implemented by the questionnaire generator, generally described on page 5 lines 10-24 and page 6 line 20 to page 7 line 17, and illustrated in FIGS. 2 and 5 of the applicaiton.

Step (D) may access a database in a storage medium (library 120), the database generally contains model information relating to (i) an aspect of care (620), (ii) the expression of risk (630) and (iii) the level of risk (610). The database is generally illustrated in FIG. 6 and described in the corresponding text on page 7 line 18 to page 8 line 7 of the application.

Step (E) may generate a profile for the individual (FIG. 7) based on one or more of the aspects of care, responses to the questions, the expression of risk and the levels of risk associated with the individual. Creation of the profile is generally described on page 8 line 8 to page 9 line 4 as illustrated in FIG. 7 of the application. Step (F) may send health related information to the individual based on the profile (750, 752, 754). The data relating to the physical condition of the

individual generally comprises patient information from one or more medical claims (stored in 320) received by the server from some medical claims paying organization associated with the individual.

C. In a third embodiment, represented by independent claim 19, the presently claimed invention provides a storage medium for use in a server (system 10) to communicate with one or more patient (100) devices. The storage medium generally records a computer program that is readable and executable by the server. The computer program may include steps (A) to (E). The computer program may be executed by the server to assemble care specific content objects, called dialogs (300), into programs for patient healthcare management. The programs may subsequently be transferred to the individuals at the patient devices (remote terminals). Steps of the method are generally described on page 2 line 1 to page 3 line 11 and page 4 line 11 to page 5 line 9 and illustrated in FIGS. 2-5, 7 and 8 of the application.

Step (A) may display a plurality of icons of a plurality of questions (510), a plurality of answers (520), a plurality of follow-up actions (530) and a plurality of follow-up answers (540) Step (B) may be to receive a selection to each of a particular question of the questions (510), a particular answer of the answers (520), a particular follow-up action of the follow-up actions (530) and a particular follow-up answer of the follow-up answers (540) from a user (of the system 100). Step (C) may link the icons of the particular question (510), the particular answer (520), the particular follow-up action (530) and particular follow-up responses (540). Step (D) may convert the linked icons into a questionnaire (program). Steps (A) to (D) may be implemented by a dialog

composer 20. Operations are generally described on page 5 lines 10-24 and page 6 line 20 to page 7 line17, as illustrated in FIGS. 2 and 5 of the application.

Step (E) may transmit (daily 750, weekly 760 or other time basis 754) the questionnaire to the one or more patient devices over a communication network. Step (E) may be implemented by a program composer 30. Scheduling of the transmissions is generally described on page 8 lines 17-26, as illustrated in FIG. 7.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The single ground of rejection is whether claims 1-7, 9-16 and 18-22 are patentable under 35 U.S.C. §102(e) over Papageorge, U.S. Patent No. 6,584,445.

VII. ARGUMENTS

A. 35 U.S.C. §102

As set forth on page 2 of the final Office Action,[1] claims 1-7, 9-16 and 18-22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Papageorge.

The Federal Circuit has stated: "A claim is anticipated only if ***each element*** as set forth in the claim is found, either ***expressly or inherently*** described, in a single prior art reference."[2] "The elements must be ***arranged as required by the claim***."[3] The Federal circuit has added that the anticipation determination is viewed from one of ordinary skill in the art: "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention."[4] As explained herein below, because Papageorge does not show each element of the claims, arranged as in the claims, Papageorge does not anticipate the claimed invention.

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[1] Mailed October 17, 2008.

[2] Manual of Patent Examining Procedure (M.P.E.P.), Eighth Edition, Rev. 7, July 2008, §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, USPQ2d 1051, 1053 (Fed Circ. 1987) (emphasis added).

[3] M.P.E.P. §2131 citing *In re Bond,* 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (emphasis added).

[4] *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991).

1. Claims 1 and 6 are patentable over Papageorge

Claim 1 provides a server comprising a questionnaire generator, a database in a storage medium containing modeling information and a profile generator. The Examiner cited (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in rejecting all of the elements of claim 1. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding any apparent structure that one of ordinary skill in the art could consider to be similar to the claimed structure. The Examiner did not provide any findings of fact to support the conclusion that Papageorge allegedly includes the claimed structure. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge shows each of the claim limitations as arranged in the claims.

In particular, the cited text in (i) column 8 line 4 to column 9 line 33 of Papageorge describe an example of how to **build** a Computerized Health Evaluation System (CHES). The cited text on column 11 lines 15-30 of Papageorge describe **a processing phase** of the CHES system. However, none of the cited text appears to mention any particular structure beyond the use of a computerized system. Nothing is said about a questionnaire generator, a database in a storage medium, or a profile generator. The rest of Papageorge appears to be silent regarding the claimed structural elements. Therefore, Papageorge does not show all of the claim limitations as arranged in the claims.

In contrast, Papageorge appears to concern the creation and operation of the CHES system. The CHES components include a database, a patient input module, a physician input module and a computer algorithm per claims 1 and 8 of Papageorge. Column 6 line 66 to column 7 line 15

of Papageorge appear to describe (i) the patient input module as a module for storing patient answers to questions and (ii) the physician input module as a module for storing physician input data. The Abstract of Papageorge appears to describe the database as storing the latest medical findings concerning the particular disease and condition. As will be shown below, the two input modules and the database of Papageorge do not have all of the claim limitations of the questionnaire generator, profile generator and database in a storage medium, as arranged in the claims. In particular, neither input module of Papageorge has all of the claim limitations of the questionnaire generator. Neither input module of Papageorge has all of the claim limitations of the profile generator. The database of Papageorge does not contain modeling information, as does the claimed database. Therefore, Papageorge does not disclose a questionnaire generator, a database in a storage medium containing modeling information and a profile generator, as presently claimed.

Claim 1 further provides the questionnaire generator (i) generating a questionnaire comprising one or more questions for determining an expression of risk for an individual. The Examiner cited (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in the rejection. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding the CHES system having a questionnaire generator that generates a questionnaire. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claims. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge shows each of the claim limitations as arranged in the claims.

In contrast, Papageorge mentions that a questionnaire is developed to pose questions to which a patient can respond. The development of the questionnaire is described in column 8 line

8 of Papageorge as part of a process for"building" a CHES system. However, Papageorge appears to be silent that any module of CHES generates the questionnaires. Instead, the various steps, such as asking experts to reconcile practice view with published outcomes in column 8 item 2g, appear to show that the section of Papageorge cited by the Examiner describes a process of creating a CHES system, not an operation of the CHES system. FIG. 2 of Papageorge further shows the questionnaire data is an input to the CHES system, but does not show the CHES system generating the questionnaire itself. In particular, there is no arrow from the CHES system out to the patient to carry the questionnaire. As such, the development of the questionnaires of Papageorge appears to be done before the CHES system is operational. Therefore, Papageorge does not describe a questionnaire generator for generating a questionnaire comprising one or more questions for determining an expression of risk for an individual, as presently claimed.

Claim 1 further provides that the questionnaire comprises (c) one or more follow-up actions. The Examiner again cited (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in the rejection. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding generating a questionnaire containing follow-up actions. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge shows each of the claim limitations as arranged in the claims.

In contrast, Papageorge mentions that a questionnaire is developed to pose questions to which a patient can respond. However, Papageorge appears to be silent regarding the questionnaire having anything other than questions. The questionnaire shown by Papageorge

appears limited in scope. Specifically, the text of Papageorge in column 8 lines 58-59 states that the purpose of the patient questionnaire is "to elicit treatment preferences and their bases" such as economic, family, lifestyles, fear of surgery, and pain. Nothing is said about the questionnaires having follow-up actions. Therefore, Papageorge does not describe a questionnaire comprising one or more follow-up actions, as presently claimed.

Claim 1 further provides that the questionnaire generator (ii) associates each of the answer options with one of a second number of values representing a level of risk, the second number of values being greater than the first number of answer options. The Examiner again cited the same text in (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding (i) the number of response options available to the questions and (ii) the number of response options being less than a second number of values representing a level of risk. Furthermore, the Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge shows each of the claim limitations as arranged in the claims.

In contrast, the text in column 11 lines 21-22 of Papageorge indicates that multiple levels of risk can be associated each possible response computed. However, Papageorge appears to be silent that fewer response options exist in the questionnaire than the multiple levels of risk. Papageorge does not appear to make any associations between the number of answer options and the levels of risk. In contrast, one of ordinary skill in the art would likely consider each set of answer options to have a broad range of possible answers to allow for a clear indication of where the patient

stands. For example, in asking the patient about a fear of surgical risk, the question of Papageorge may hypothetically ask for the patient to describe his fear on a scale of 1 to N, where N is some large number. The range of 1 to N may be mapped directly to, or normalized into the levels of risk. Therefore, Papageorge does not describe a questionnaire generator that associates each of the answer options with one of a second number of values representing a level of risk, the second number of values being greater than the first numbers of answer options, as presently claimed.

Claim 1 further provides that the database contains model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk. The Examiner again cited the same text in column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding (i) model information and (ii) the model information comprising an aspect of care. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge shows each of the claim limitations as arranged in the claims.

In contrast, the cited text, and the rest of Papageorge appear to be silent regarding any models. Papageorge appears to be silent regarding modeling information relating to an aspect of care. Papageorge appears to be silent regarding modeling information relating to an expression of risk. Papageorge appears to be silent regarding modeling information relating to a level of risk. Furthermore, the database of Papageorge is only described as having medical findings concerning the particular disease and condition per the Abstract of Papageorge. Therefore, Papageorge does not

describe a database in a storage medium, the database containing model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk, as presently claimed.

Claim 1 further provides that the physical condition of the individual comprises patient information from one or more medical claims received by the server from some medical claims paying organization associated with the individual. The Examiner cited the text in column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding the reception of medical claims at the CHES system from a medical claims paying organization associated with the patient. Furthermore, the Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, column 6 lines 43-47 of Papageorge indicates that the CHES system is used by the physicians and patients to eliminate influences from outside sources. In this case, a medical claims paying organization would be an outside influence. Furthermore, Papageorge appears to be silent regarding the CHES system receiving medical claims from a medical claims paying organization. The only "claims" mentioned by Papageorge appear to be the patent claims at the end of the document. Therefore, Papageorge does not describe that the physical condition of the individual comprises patient information from one or more medical claims received by the server from a medical claims paying organization associated with the individual, as presently claimed.

In summary, Papageorge appears to be silent regarding the claimed structure. Papageorge does not appear to describe all of the claim limitations as arranged in the claimed

questionnaire generator. Papageorge does not appear to describe all of the claim limitations as arranged in the claimed database. Papageorge does not appear to describe all of the claim limitations as arranged in the claimed profile generator. Therefore, the requirements under M.P.E.P. §2131 to establish anticipation have not been meet. As such, the claimed invention is fully patentable over the cited reference and the rejections should be reversed.

2. Claims 10, 14 and 15 are patentable over Papageorge

Claim 10 provides (A) generating a questionnaire comprising (i) one or more questions for determining an expression of risk for the individual. The Examiner cited column 8 line 4 to column 9 line 33 Of Papageorge in the rejection. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding the CHES system generating a questionnaire. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, Papageorge mentions that a questionnaire is developed to pose questions to which a patient can respond. The development of the questionnaire is described in column 8 line 8 of Papageorge as being part of a process for"building" a CHES system. However, Papageorge appears to be silent that any module of CHES generates the questionnaires. Instead, the various steps, such as asking experts to reconcile practice view with published outcomes in column 8 item 2g, indicates that the section of Papageorge cited by the Examiner describes a process of creating a

CHES system, not an operation of the CHES system. FIG. 2 of Papageorge further shows the questionnaire data is an input to the CHES system, but does not show the CHES system generating the questionnaire itself. In particular, there is no arrow from the CHES system out to the patient to carry the questionnaire. As such, the development of the questionnaires of Papageorge appears to be performed before the CHES systems is operational. Therefore, Papageorge does not describe generating a questionnaire comprising one or more questions for determining an expression of risk for the individual, as presently claimed.

Claim 10 further provides that the questionnaire comprises (c) one or more follow-up actions. The Examiner cited (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in the rejection. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding generating a questionnaire containing follow-up actions. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, Papageorge mentions that a questionnaire is developed to pose questions to which a patient can respond. However, Papageorge appears to be silent regarding the questionnaire having anything other than questions. The questionnaire disclosed by Papageorge is limited in scope. Specifically, the text of Papageorge in column 8 lines 58-59 states that the purpose of the patient questionnaire is "to elicit treatment preferences and their bases" such as economic, family, lifestyles, fear of surgery, and pain. Nothing is said about the questionnaires having follow-

up actions. Therefore, Papageorge does not describe a questionnaire comprising one or more follow-up actions, as presently claimed.

Claim 10 further provides (B) associating each of the answer options with one of a second number of values representing a level of risk, the second number being greater than the first number. The Examiner again cited the same text in (i) column 8 line 4 to column 9 line 33 and (ii) column 11 lines 15-30 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding (i) the number of response options available to the questions and (ii) the number of response options being less than a number of values representing a level of risk. Furthermore, the Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the text in column 11 lines 21-22 of Papageorge indicates multiple levels of risk can be associated each possible response computed. However, Papageorge appears to be silent that fewer response options exist in the questionnaire than the multiple levels of risk. Papageorge does not appear to make any associations between the number of answer options and the levels of risk. In particular, one of ordinary skill in the art would likely consider each set of answer options to have a broad range of possible answers to allow for a clear indication of where the patient stands. For example, in asking the patient about a fear of surgical risk, the question of Papageorge may hypothetically ask for the patient to describe his fear on a scale of 1 to N, where N is some large number. The range of 1 to N may map directly to, or be normalized into the levels of risk. Therefore,

Papageorge does not describe associating each of the answer options with one of a second number of values representing a level of risk, the second number being greater than the first number, as presently claimed.

Claim 10 further provides (D) accessing a database in a storage medium, the database containing model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk. The Examiner again cited the same text in column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding (i) model information and (ii) the model information comprising an aspect of care. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the cited text, and the rest of Papageorge appear to be silent regarding any models. Papageorge appears to be silent regarding modeling information relating to an aspect of care. Papageorge appears to be silent about modeling information relating to an expression of risk. Papageorge appears to be silent about modeling information relating to the level of risk. Furthermore, the database of Papageorge is only described as having medical findings concerning a particular disease and condition per the Abstract of Papageorge. Therefore, Papageorge does not describe accessing a database in a storage medium, the database containing model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk, as presently claimed.

Claim 10 further provides that the physical condition of the individual comprises patient information from one or more medical claims received by the server from a medical claims paying organization associated with the individual. The Examiner cited the text in column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding the reception of medical claims at the CHES system from a medical claims paying organization associated with the patient. Furthermore, the Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, column 6 lines 43-47 of Papageorge indicates that the CHES system is used by the physicians and patients to eliminate influences from outside sources. In this case, a medical claims paying organization would be an outside influence. Furthermore, Papageorge appears to be silent regarding the CHES system receiving medical claims from a medical claims paying organization. The only "claims" mentioned by Papageorge appear to be the patent claims at the end of the document. Therefore, Papageorge does not describe that the physical condition of the individual comprises patient information from one or more medical claims received by the server from a medical claims paying organization associated with the individual, as presently claimed.

In summary, Papageorge is silent regarding generating a questionnaire with the CHES system. Papageorge is silent regarding one or more follow-up actions in the questionnaire. Papageorge is silent regarding associating each of the answer options with one of a second number of values representing a level of risk. Papageorge is silent regarding a database in a storage medium,

the database containing model information. Papageorge is silent regarding patient information from one or more medical claims. Therefore, the requirements under M.P.E.P. §2131 to establish anticipation have not been meet. As such, the claimed invention is fully patentable over the cited reference and the rejection should be reversed.

3. Claims 19 and 20 are patentable over Papageorge

Claim 19 provides (A) displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers. The Examiner cited (i) column 8 line 4 to column 9 line 33 and (ii) the Abstract of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appears to be silent regarding icons of (i) questions, (ii) answers, (iii) follow-up actions and (iv) follow-up answers. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, none of the text of Papageorge cited by the Examiner mentions icons. Furthermore, the word "icon" does not appear to be in any of the text or figures of Papageorge. Nothing is said in Papageorge about question icons, answer icons, follow-up action icons or follow-up answer icons. Therefore, Papageorge does not describe displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers, as presently claimed.

Claim 19 further provides (B) receiving a selection to each of a particular question of the questions, a particular answer of the answers, a particular follow-up action of the follow-up actions and a particular follow-up answer of the follow-up answers from a user. The Examiner again cited (i) column 8 line 4 to column 9 line 33 and (ii) the Abstract of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding selections of (i) a particular question, (ii) a particular answer, (iii) a particular follow-up action and (iv) a particular follow-up answer. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the cited text, and the rest of Papageorge appear to be silent regarding any selections of icons. Papageorge appears to be silent regarding icons of follow-up actions. Papageorge appears to be silent regarding icons of follow-up answers. Therefore, Papageorge does not describe receiving a selection to each of a particular question of the questions, a particular answer of the answers, a particular follow-up action of the follow-up actions and a particular follow-up answer of the follow-up answers from a user, as presently claimed.

Claim 19 further provides (C) linking the particular icons. The Examiner cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appears to be silent regarding linking of icons. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim.

Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

As noted above, Papageorge does not mention icons. Papageorge appears to be silent regarding icons of follow-up actions. Papageorge appears to be silent regarding icons of follow-up answers. In the absence of the icons, one of ordinary skill in the art would not understand Papageorge to allegedly explain how to link the nonexisting icons. Therefore, Papageorge does not describe linking the particular icons, as presently claimed.

Claim 19 further provides (D) converting the linked icons into a questionnaire. The Examiner again cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding converting icons into a questionnaire. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

As mentioned above, Papageorge does not mention icons. Hence, one of ordinary skill in the art would not understand Papageorge to allegedly explain how to convert the questions allegedly linked to nonexistent icons into a questionnaire. Furthermore, Papageorge mentions that a questionnaire is developed to pose questions to which a patient can respond. The development of the questionnaire is described in column 8 line 8 of Papageorge as being part of a process for"building" a CHES system. However, Papageorge appears to be silent that any module of CHES generates the questionnaires. Instead, the various steps, such as asking experts to reconcile practice

view with published outcomes in column 8 item 2g, indicates that the section of Papageorge cited by the Examiner describes a process of creating a CHES system, not an operation of the CHES system. FIG. 2 of Papageorge further shows the questionnaire data is an input to the CHES system, but does not show the CHES system generating the questionnaire itself. In particular, there is no arrow from the CHES system out to the patient to carry the questionnaire. As such, the development of the questionnaires of Papageorge appears to be performed before the CHES systems is operational. Therefore, Papageorge does not describe converting the linked icons into a questionnaire, as presently claimed.

In summary, Papageorge is silent regarding displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers. Papageorge is silent regarding receiving a selection to each of a particular question of the questions, a particular answer of the answers, a particular follow-up action of the follow-up actions and a particular follow-up answer of the follow-up answers from a user. Papageorge is silent regarding linking the particular icons. Papageorge is also silent regarding converting the linked icons into a questionnaire. Therefore, the requirements under M.P.E.P. §2131 to establish anticipation have not been meet. As such, the claimed invention is fully patentable over the cited reference and the rejections should be reversed.

4. Claims 2 and 11 are patentable over Papageorge

Claim 2 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are

hereby incorporated by reference in support of claim 2. Claim 11 depends, directly or indirectly, from claim 10 and, therefore, includes all the limitations of claim 10. Consequently, the arguments presented above in support of claim 10 are hereby incorporated by reference in support of claim 11. However, claim 2 recites a further limitation that the profile of the individual is updated based on one or more follow-up responses.

The Examiner cited the text in column 8 lines 22-24 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding follow-up responses. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the cited text of Papageorge mentions follow-up study publications that collect and analyze treatment outcome data. The "follow-ups" of Papageorge are not in the questionnaires of Papageorge. The "follow-ups" of Papageorge are not associated with any particular patient using the CHES system and thus do not appear to be suitable to update a profile of a patient using the CHES system. The "follow-up" studies are assessed in the process of creating a CHES system per column 8 line 12. Hence, the "follow-ups" of Papageorge have no similarity to the claimed follow-up questions in the questionnaire. Therefore, Papageorge does not describe that the profile of the individual is updated based on one or more follow-up responses, as presently claimed. As such, claims 2 and 11 are fully patentable over the cited reference and the rejections should be reversed.

5. Claims 3, 12 and 21 are patentable over Papageorge

Claim 3 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are hereby incorporated by reference in support of claim 3. Claim 12 depends, directly or indirectly, from claim 10 and, therefore, includes all the limitations of claim 10. Consequently, the arguments presented above in support of claim 10 are hereby incorporated by reference in support of claim 12. Claim 21 depends, directly or indirectly, from claim 19 and, therefore, includes all the limitations of claim 19. Consequently, the arguments presented above in support of claim 19 are hereby incorporated by reference in support of claim 21. However, claim 3 recites the further limitations that (i) the profile further comprises a language of the individual and a current health condition of the individual and (ii) the questionnaire generator also tailors the questionnaire in dependence upon the language and the current health condition of the individual.

The Examiner cited column 7 line 65 to column 8 line 4 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding a language of the patient. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Furthermore, Papageorge does not appear to mention the word "language" anywhere in the text or figures. Therefore, Papageorge does not describe that (i) the profile comprises a language of the individual,and a current health condition of the individual and (ii) the questionnaire generator also tailors the questionnaire in dependence upon the language and the current health condition of the individual as presently claimed. As such,

claims 3, 12 and 21 are fully patentable over the cited reference and the rejections should be reversed.

6. Claim 4 is patentable over Papageorge

Claim 4 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are hereby incorporated by reference in support of claim 4. However, the claim provides (from claim 1) (i) a profile for the individual, (from claim 4) (ii) a motivational profile and (from claim 4) (iii) a comprehensive capacity profile.

The Examiner cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding three types of profiles. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, Papageorge only appears to mention a risk tolerance profile. One of ordinary skill in the art would understand that the single risk tolerance profile of Papageorge could match at best one of the three claimed profiles. The rest of Papageorge appears to be silent regarding any other types of profiles. Therefore, Papageorge does not describe a profile for the individual, a motivational profile and a comprehensive capacity profile, as presently claimed. As such, claim 4 is fully patentable over the cited reference and the rejection should be reversed.

7. Claims 5 and 13 are patentable over Papageorge

Claim 5 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are hereby incorporated by reference in support of claim 5. Claim 13 depends, directly or indirectly, from claim 10 and, therefore, includes all the limitations of claim 10. Consequently, the arguments presented above in support of claim 10 are hereby incorporated by reference in support of claim 13. However, claim 5 recites a further limitation that the health related information (sent from the server to the individual) comprises a request for additional responses.

The Examiner cited column 7 line 65 to column 8 line 4 in the rejection. In contrast, the cited text, and the rest of Papageorge appear to be silent regarding a request for additional responses. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the cited text of Papageorge only appears to describe items that effect recent medical advances from studies. Nothing is said about sending requests to the patients for additional responses. Therefore, Papageorge does not describe the health related information sent from the server to the individual comprises a request for additional responses, as presently claimed. As such, claims 5 and 13 are fully patentable over the cited reference and the rejections should be reversed.

8. Claims 7 and 16 are patentable over Papageorge

Claim 7 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are hereby incorporated by reference in support of claim 7. Claim 16 depends, directly or indirectly, from claim 10 and, therefore, includes all the limitations of claim 10. Consequently, the arguments presented above in support of claim 10 are hereby incorporated by reference in support of claim 16. However, claim 7 recites a further limitation that one or more measurements received by the server from a monitoring device connected to the apparatus.

The Examiner cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding any monitoring type device connected to an Internet terminal that could measure a parameter of the patient. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, column 8 lines 23-34 of Papageorge mentions "outcome data" from published follow-up studies. However, Papageorge appears to be silent that the outcome data is measured from the patient by a monitoring device. In particular, the CHES system appears to operate before any testing is done on the patient per the Abstract of Papageorge. Therefore, Papageorge does not describe one or more measurements received by the server from a monitoring

device connected to the apparatus, as presently claimed. As such, claims 7 and 16 are fully patentable over the cited reference and the rejections should be reversed.

9. Claims 9 and 18 are patentable over Papageorge

Claim 9 depends, directly or indirectly, from claim 1 and, therefore, includes all the limitations of claim 1. Consequently, the arguments presented above in support of claim 1 are hereby incorporated by reference in support of claim 9. Claim 18 depends, directly or indirectly, from claim 10 and, therefore, includes all the limitations of claim 10. Consequently, the arguments presented above in support of claim 10 are hereby incorporated by reference in support of claim 18. However, claim 9 recites a further limitation that medical information from electronic medical records are received by the server from a services organization associated with the individual.

The Examiner cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding electronic medical records being provided from a services organization. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the cited text of Papageorge only appears to mention (i) medical experts and (ii) medical costs. Papageorge appears to be silent regarding anything that one of ordinary skill in the art could consider being similar to the claimed electronic medical records. Furthermore, Papageorge appears to be silent regarding a services organization that could possibly provide the

missing electronic medical records. Therefore, Papageorge does not appear to describe medical information from electronic medical records are received by the server from a services organization associated with the individual, as presently claimed. As such, claim 9 and 18 are fully patentable over the cited reference and the rejections should be reversed.

10. Claim 22 is patentable over Papageorge

Claim 22 depends, directly or indirectly, from claim 19 and, therefore, includes all the limitations of claim 19. Consequently, the arguments presented above in support of claim 19 are hereby incorporated by reference in support of claim 22. However, the claim recites a further limitation of simulating the questionnaire prior to the transmission of the questionnaire to the one or more patient devices.

The Examiner cited column 8 line 4 to column 9 line 33 of Papageorge in the rejection. However, the cited text, and the rest of Papageorge appear to be silent regarding simulations. The Examiner did not provide any arguments or findings of fact to support the conclusion that Papageorge allegedly reads on the claim. Therefore, the Examiner did not meet the burden under M.P.E.P. §2131 to establish that Papageorge discloses each of the claim limitations as arranged in the claims.

In contrast, the text in column 8 line 4 to column 9 line 33 of Papageorge describes an example of how to **build** a CHES system. The cited text appears to be silent regarding the CHES system performing a simulation. Furthermore, Papageorge does not include any of the words "simulate", "simulation" or "simulating". Therefore, Papageorge does not describe simulating the

questionnaire prior to the transmission of the questionnaire to the one or more patient devices, as presently claimed. As such, claim 22 is fully patentable over the cited reference and the rejection should be reversed.

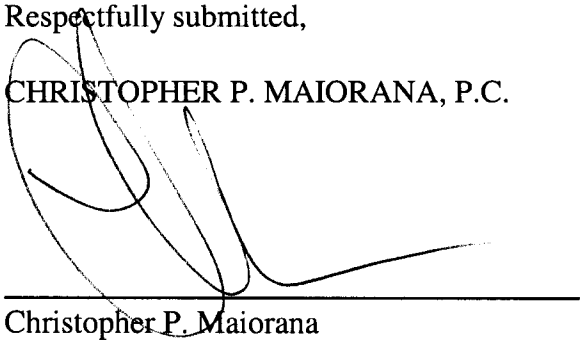
B. CONCLUSION

The cited reference does not suggest a server generating a questionnaire. Papageorge does not suggest one or more follow-up actions in the questionnaire. Papageorge does not suggest associating each of the answer options with one of a second number of values representing a level of risk. Papageorge does not suggest a database in a storage medium, the database containing model information. Papageorge does not suggest patient information from one or more medical claims as recited in claims 1-7, 9-16 and 18. Furthermore, Papageorge does not suggest displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers. Papageorge does not suggest receiving a selection to each of a particular question of the questions, a particular answer of the answers, a particular follow-up action of the follow-up actions and a particular follow-up answer of the follow-up answers from a user. Papageorge does not suggest linking the particular icons. Papageorge does not suggest converting the linked icons into a questionnaire as recited in claims 19-22. Hence, the Examiner has clearly erred with respect to the patentability of the claimed invention. It is respectfully requested that the Board overturn the Examiner's rejection of all pending claims, and hold that the claims are not rendered obvious by the cited reference. However, should the Board find the arguments herein in support of independent claims 1, 10 and/or 19 unpersuasive, the Board is respectfully requested to

carefully consider the arguments set forth above in support of each of the independently patentable groups.

Respectfully submitted,

CHRISTOPHER P. MAIORANA, P.C.



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Dated: March 12, 2009

c/o Sandeep Jaggi
Health Hero Network

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VIII. CLAIM APPENDIX

The claims of the present application which are involved in this appeal are as follows:

1. A server comprising:

a questionnaire generator for (i) generating a questionnaire comprising (a) one or more questions for determining an expression of risk for an individual, (b) a first number of answer options to each of said questions and (c) one or more follow-up actions, wherein said expression of risk concerns at least one of a physical condition of said individual, a mental condition of said individual, and a behavior of said individual, (ii) associating each of said answer options with one of a second number of values representing a level of risk, said second number of values being greater than said first number of answer options and (iii) transmitting said questionnaire from said server to an apparatus, wherein said apparatus is (a) associated with said individual and (b) remotely located from said server;

a database in a storage medium, said database containing model information relating to (i) an aspect of care, (ii) said expression of risk and (iii) said level of risk; and

a profile generator for (i) generating a profile for said individual based on one or more of said aspects of care, responses to said questions, said expression of risk and said level of risk associated with said individual and (ii) sending health related information to said individual based on said profile, wherein data relating to said physical condition of said individual comprises patient information from one or more medical claims received by said server from a medical claims paying organization associated with said individual.

2. The server of claim 1, wherein said profile of said individual is updated based on one or more follow-up responses.

3. The server of claim 1, wherein (i) said profile further comprises a language of said individual, and a current health condition of said individual and (ii) said questionnaire generator also tailors said questionnaire in dependence upon said language and said current health condition of said individual.

4. The server of claim 1, wherein said questionnaire generator further generates a motivational profile and a comprehension capacity profile of said individual based on said responses to said questions received by said server from said apparatus.

5. The server of claim 1, wherein said health related information comprises:

a request for additional responses; and

educational information.

6. The server of claim 5, wherein said educational information is received by said server from an external source.

7. The server of claim 1, wherein said data relating to said physical condition of said individual further comprises one or more measurements received by said server from a monitoring device connected to said apparatus.

8. (CANCELED).

9. The server of claim 1, wherein said data related to said physical condition of said individual further comprises medical information from electronic medical records received by said server from a services organization associated with said individual.

10. A method for providing customized health information to an individual, said method comprising the steps of:

(A) generating a questionnaire comprising (i) one or more questions for determining an expression of risk for said individual, (ii) a first number of answer options to each of said questions and (iii) one or more follow-up actions, wherein said expression of risk concerns at least one of a physical condition of said individual, a mental condition of said individual, and a behavior of said individual;

(B) associating each of said answer options with one of a second number of values representing a level of risk, wherein said second number is greater than said first number;

(C) transferring said questionnaire from a server to an apparatus, wherein said apparatus is (i) associated with said individual and (ii) remotely located from said server;

(D) accessing a database in a storage medium, said database containing model information relating to (i) an aspect of care, (ii) said expression of risk and (iii) said level of risk;

(E) generating a profile for said individual based on one or more of said aspects of care, responses to said questions, said expression of risk and said levels of risk associated with said individual; and

(F) sending health related information to said individual based on said profile, wherein data relating to said physical condition of said individual comprises patient information from one or more medical claims received by said server from a medical claims paying organization associated with said individual.

11. The method of claim 10, further comprising the step of:

updating said profile after said server receives one or more follow-up responses.

12. The method of claim 10, further comprising the steps of:

registering a language of said individual, and a current health condition of said individual in said profile; and

tailoring said questionnaire to said individual in dependence upon said language and said current health condition of said individual.

13. The method of claim 10, wherein said health related information comprises:

a request for additional responses; and

educational information.

14. The method of claim 13, wherein said educational information is received by said server from an external source.

15. The method of claim 10, further comprising the step of:

generating a report comprising said profile.

16. The method of claim 10, wherein said data relating to said physical condition further comprises one or more measurements received by said server from a monitoring device connected to said apparatus.

17. (CANCELED).

18. The method of claim 10, wherein said data relating to said physical condition of said individual further comprises medical information from electronic medical records received by said server from a services organization associated with said individual.

19. A storage medium for use in a server to communicate with one or more patient devices, the storage medium recording a computer program that is readable and executable by the server, the computer program comprising the steps of:

(A) displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers;

(B) receiving a selection to each of a particular question of said questions, a particular answer of said answers, a particular follow-up action of said follow-up actions and a particular follow-up answer of said follow-up answers from a user;

(C) linking said icons of said particular question, said particular answer, said particular follow-up action and particular follow-up responses;

(D) converting said linked icons into a questionnaire; and

(E) transmitting said questionnaire to said one or more patient devices over a communication network.

20. The storage medium of claim 19, wherein the computer program further comprises the step of:

assigning a position of said particular answer along a risk scale ranging from a low risk value to a high risk value.

21. The storage medium of claim 19, further comprising the steps of:

registering a language of an individual and a current health condition of said individual in a profile; and

tailoring said program to said individual in dependence upon said language and said current health condition of said individual.

22. The storage medium of claim 19, further comprising the step of:

simulating said questionnaire prior to said transmission of said questionnaire to said one or more patient devices.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.